

STATE OF MICHIGAN
COURT OF APPEALS

CAROLYN GRAHAM, Personal Representative
of the Estate of TERENCE ANTHONY
GRAHAM,

UNPUBLISHED
January 18, 2007

Plaintiff-Appellant,

v

SECURE CARE, INC. and TRACEY LAKATOS,
LPN,

No. 262138
Washtenaw Circuit Court
LC No. 02-000526-NH

Defendants-Appellees.

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

The question in this case is whether an estate may recover damages for a death caused by the decedent's own illegal conduct and his subsequent effort to conceal that illegal conduct. Plaintiff appeals the trial court's grant of summary disposition to defendants, and we affirm.

I. Facts

Terance Graham died from cocaine intoxication while in the custody of the Washtenaw County Sheriff's Department. It is undisputed that, during his arrest for marijuana possession, Graham surreptitiously swallowed an ounce of cocaine. At the county jail, Graham repeatedly denied that he had any immediate medical needs and he denied taking any medication or narcotics. When Graham began to feel ill, he failed to disclose his ingestion of cocaine and he lied to the sheriff's officers and nurse Tracy Lakatos about what may have caused his illness. When Graham's symptoms worsened, Lakatos took him to an on-site medical clinic and he was then transported to a hospital, where he died an hour later.

Plaintiff, as personal representative of Graham's estate, filed this wrongful death, medical malpractice action against Secure Care, a company hired to provide medical care for jail inmates, and Nurse Lakatos. Defendants filed a motion for summary disposition and argued that the

wrongful conduct rule bars plaintiff's claim. The trial court agreed with defendants and granted summary disposition on January 26, 2005.

II. Analysis¹

Our Supreme Court explained in *Orzel v Scott Drug Co*, 449 Mich 550, 558; 537 NW2d 208 (1995):

When a plaintiff's action is based, in whole or in part, on his own illegal conduct, a fundamental common-law maxim generally applies to bar the plaintiff's claim:

[A] person cannot maintain an action if, in order to establish his cause of action, he must rely, in whole or in part, on an illegal or immoral act or transaction to which he is a party. [Quoting 1A CJS, Actions, § 29, p 386. See also 1 Am Jur 2d, Actions, § 45, p 752.]

The Court in *Orzel* further opined, that “[t]he rationale that Michigan courts have used to support the wrongful-conduct rule are rooted in the public policy that courts should not lend their aid to a plaintiff who founded his cause of action on his own illegal conduct.” *Id.* at 559. Moreover, the Court explained:

If courts chose to regularly give their aid under such circumstances, several unacceptable consequences would result. First, by making relief potentially available for wrongdoers, courts in effect would condone and encourage illegal conduct. Second, some wrongdoers would be able to receive a profit or compensation as a result of their illegal acts. Third, and related to the two previously mentioned results, the public would view the legal system as a mockery of justice. Fourth, and finally, wrongdoers would be able to shift much of the responsibility for their illegal acts to other parties. As stated by the Court of Appeals, where the plaintiff has engaged in illegal conduct, it should be the “plaintiff's own criminal responsibility which is determinative.” [*Id.* at 559-560 (citations omitted).]

“[T]o implicate the wrongful-conduct rule, the conduct must be serious in nature and prohibited under a penal or criminal statute.” *Hashem v Les Stanford Oldsmobile, Inc*, 266 Mich App 61,

¹ The trial court granted defendants' motion pursuant to MCR 2.116(C)(10), because it relied on evidence outside of the complaint. We review a grant of summary disposition de novo. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 357; 597 NW2d 250 (1999). In reviewing a decision under MCR 2.116(C)(10), we consider all documentary evidence in the light most favorable to the non-moving party, affording all reasonable inferences to the nonmovant, to determine whether there is any genuine issue of material fact that would entitle the non-moving party to judgment as a matter of law. *Knauff v Oscoda Co Drain Comm'r*, 240 Mich App 485, 488; 618 NW2d 1 (2000); *Wilcoxon, supra* at 358.

89; 697 NW2d 558, 574 (2005). “Further, the wrongful-conduct rule only applies if there exists a sufficient causal nexus between the plaintiff’s illegal conduct and the asserted damages.” *Id.*²

Graham’s possession of approximately one ounce of cocaine violates MCL 333.7403(1), and is a felony punishable by up to four years in prison, MCL 333.7403(2)(a)(iv). Graham also swallowed the cocaine which would either violate the prohibition on the illegal use of controlled substances, MCL 333.7404(1), or would certainly qualify as an attempt to conceal his criminal possession of cocaine. Thus, Graham’s serious, illegal acts clearly satisfy the first factor of the rule.

Plaintiff contends, however, that there is an insufficient causal nexus between Graham’s ingestion of cocaine and his death. Plaintiff maintains that Graham’s illegal activity was merely a condition in a chain of events that led to his death. Her contention is without merit because both the autopsy report and plaintiff’s expert witness opined that Graham died of cocaine intoxication, and Graham’s cellmate testified that Graham told him that he had swallowed an ounce of cocaine. Clearly, Graham’s illegal conduct, his ingestion of a controlled substance and his repeated efforts to conceal his conduct, was the cause of his death. *Hashem, supra* at 89.

Plaintiff further argues that this case is analogous to *Manning v Bishop of Marquette*, 345 Mich 130, 132; 76 NW2d 75 (1956), in which the plaintiff stepped into a hole in a walkway after she left an illegal bingo game. The gambling in *Manning* was incidental to the plaintiff’s injuries because it did not naturally follow that illegal gambling might lead to a slip and fall. In contrast, here, death is a natural and probable consequence of swallowing an ounce of cocaine and concealing that fact by repeatedly lying to both the police and health care professionals. Graham would not have died had he not swallowed the cocaine, so his own illegal conduct gave rise not only to his injuries but to the claim as well. In other words, because plaintiff cannot establish her claim that defendants failed to diagnose a cocaine overdose without relying on Graham’s possession and ingestion of cocaine, Graham’s illegal conduct is not merely incidentally or collaterally connected to his injuries, but rather, was the primary cause of his injuries.

Finally, plaintiff asserts that defendants were required by law to provide Graham with health care and that, therefore, the wrongful conduct rule cannot apply. To support this argument, plaintiff cites *Orzel, supra*, which provides an exception to the wrongful conduct rule when a plaintiff alleges a violation of statute that implicitly or explicitly allows for recovery

² “[T]he degree of culpability between the plaintiff and the defendant,” *Orzel, supra* at 569-570, is not at issue because plaintiff does not allege that defendants’ conduct was illegal.

despite the plaintiff's wrongful conduct.³ Plaintiff, however, cites no statute that would allow for recovery despite Graham's wrongful conduct, so this exception does not apply.⁴

In sum, an estate may not recover for the death of a person who ingests lethal amounts of illegal drugs and then conceals that conduct to those who repeatedly attempt to provide him medical care. To permit such a claim to proceed would undermine the principles underlying the wrongful conduct rule. The rule is designed to avoid condoning criminal activity, to uphold public confidence in the judiciary, and to prevent wrongdoers from shifting blame to others for their own conduct. *Orzel*, *supra* at 559-560. We hold that application of the wrongful conduct rule in this case would clearly further these policy considerations.

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Bill Schuette

³ For example, a minor who is served alcohol in violation of the liquor control act might sue the furnisher of alcohol despite his own wrongful conduct because, by enacting legislation to protect minors, the public and the Legislature have declared that minors are believed to be incapable of protecting themselves from the dangers of alcohol. See *Orzel*, *supra* at 570, citing *Longstreth v Gensel*, 423 Mich 675, 696; 377 NW2d 804 (1985).

⁴ Though plaintiff claims that defendants had a duty to provide Graham with medical care under *Estelle v Gamble*, 429 US 97; 97 S Ct 285; 50 L Ed 2d 251 (1976), the case is inapplicable. The Court in *Estelle* held that negligent diagnosis or treatment does not constitute cruel and unusual punishment unless it amounted to deliberate indifference to a prisoner's medical needs. *Id.* at 105-106. Whether Lakatos' conduct could be considered deliberately indifferent is not before this Court. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000); *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Further, to the extent plaintiff asserts that Secure Care, Inc., and Lakatos violated a duty to provide appropriate medical care in violation of the Michigan Department of Corrections County Jail Services Unit's Administrative Rules for Jails and Lockups, her claim is abandoned for failure to adequately brief the issue. *Moses Inc v SEMCOG*, 270 Mich App 401, 417; 716 NW2d 278 (2006). Though she refers to certain administrative rules applicable to medical care for jail inmates, she offers no explanation how they may implicitly or explicitly allow for recovery despite Graham's wrongful conduct. We recognize that *Orzel*, *supra*, appears, through its citation to 2 Restatement Torts, 2d, § 286, p 25, to recognize that 'administrative regulation[s]' as well legislative enactments could trigger the exception to the wrongful conduct rule. However, plaintiff here offers no argument why we should broaden the exception to include alleged administrative rule violations.